

United States District Court
District of Massachusetts

4 KORLUH KENNEDY,
5 Plaintiff,
6 v.

SPECIAL AGENT JOSEPH F.
OSMANSKI, III; SPECIAL AGENT JOHN
DOE 1; TROOPER AMY WATERMAN;
TROOPER SGT. DARLENE DECAIRE;
TROOPER ERIC KARLON; TROOPER
THIAGO MIRANDA; JOHN DOES 1-2,
TASK FORCE DETECTIVES EMPLOYED
BY THE WORCESTER POLICE
DEPARTMENT; JOHN DOES 3-4,
WORCESTER POLICE OFFICERS; JOHN
DOE 5, A TASK FORCE OFFICER
EMPLOYED BY THE MIDDLESEX
COUNTY SHERIFF'S OFFICE; AND THE
UNITED STATES OF AMERICA.

Defendants.

Case No. 4:22-cv-11152-MRG

MEMORANDUM AND ORDER

Defendants Erik Karlon, Thiago Miranda, and Darlene Decaire (“MSP Defendants”) seek an order compelling the production of Criminal Offender Record Information (“CORI”) from Plaintiff and her son. This motion is unopposed by Plaintiff. After careful consideration, and for the following reasons, the motion is **DENIED**.

I. BACKGROUND

Plaintiff Korluh Kennedy (“Mrs. Kennedy”) is a naturalized United States citizen who was born in Liberia. (Compl., 5:41, ECF No. 77.) She has five children, one of whom is Augustus B. Kormah (“Mr. Kormah”). (Compl., 5:42.) She alleges the following facts in her complaint about the warrantless search of her home in April 2019. On March 21, 2019, Mr. Kormah was arrested for a crosswalk violation and possession of a Class B substance (oxycodone) by the Massachusetts

1 State Police. (Compl., 5:43, 6:52.) Four days later, he failed to appear at his arraignment in
2 Worcester District Court and the court issued a warrant for his arrest. (Compl., 6:53.)

3 On April 10, 2019, law enforcement agents arrived at Mrs. Kennedy's home at
4 approximately 6:30 am and announced their presence. (Compl., 6:64. 7:66.) When Mrs. Kennedy
5 opened the door to her home, the agents pointed their weapons at her and immediately entered
6 without identifying themselves. (Compl., 7:68, 79.) The agents then began a search of the entire
7 house in an effort to find Mr. Kormah. (Compl., 7:71.) Mrs. Kennedy did not consent to the entry
8 or search of her home and advised the agents that Mr. Kormah did not live there and was not
9 staying there. (Compl., 7:72-73.) During this search of the house, police K-9 dogs were brought
10 into the home to aid in the search and one dog urinated inside. (Compl., 7:75-76.)
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12 After 30 to 45 minutes, Mrs. Kennedy asked if the agents had a search warrant and was
13 told that they did not. (Compl., 7:78, 80.) When she stated that she would call her lawyer, the
14 agents stopped their search and left the home. (Compl., 8:81-82.)
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II. LEGAL STANDARD

16 Under Fed. R. Civ. P. 26, a party is entitled to discover "any nonprivileged matter that
17 is *relevant* to any party's claim or defense." Fed. R. Civ. P. 26(b)(1) (emphasis added).
18 Information within this scope "need not be admissible in evidence to be discoverable." Id. But
19 discovery is not unlimited. Fed. R. Civ. P. 26(b)(2)(C)(i), (iii). Discovery is outside the scope
20 of Rule 26 if it is privileged, not relevant to the claim or defense of any party, or disproportional
21 "to the needs of the case." Fed. R. Civ. P. 26(b)(1).
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23 Prior convictions, used to attack "a witness's character for truthfulness," are admissible at
24 trial, subject to the restrictions outlined in the Federal Rules of Evidence. Fed. R. Evid. 609. If a
25 conviction is admissible under Rule 609, it may still be excluded under Rule 403 "if its probative
26 value is substantially outweighed" by the danger of unfair prejudice. Fed. R. Evid. 403.
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1 **III. DISCUSSION**

2 The MSP Defendants argue that G. L. c. 6, § 172 authorizes the Massachusetts Department
3 of Criminal Justice Information Services (“DCJIS”) to make available the CORI and Interstate
4 Identification Index (“III”) of prospective witnesses to an attorney of record in a court proceeding
5 when the information is to be used for “trial strategy and/or impeachment.” As a point of
6 clarification, G. L. c. 6, § 172 makes no mention regarding the dissemination of CORI or III
7 records to attorneys for trial strategy or impeachment purposes. The statute does, however,
8 contemplate circumstances under which an attorney may obtain a CORI, beyond what is available
9 to the general public, by submitting a valid court order directly to DCJIS. 803 Code Mass. Regs. §
10 2.07(2)(b). To obtain a valid court order, a party must show how the requested records may be
11 relevant to the party’s claims or defenses. See Harden v. Bos. Sci. Corp., 2017 U.S. Dist. LEXIS
12 58965, at *4-5 (D. Mass. Apr. 18, 2017) (granting a request for plaintiff’s CORI where defendant
13 made a sufficient showing of potential relevance).

14 Here, the MSP Defendants’ motion fails to explain how the requested records may be
15 relevant to their claims or defenses, arguing only that Mrs. Kennedy’s and Mr. Kormah’s CORI
16 “are relevant and discoverable because the information contained therein is highly relevant.” The
17 MSP Defendants also do not detail any efforts to obtain CORI records that are available to the
18 general public. See 803 Code Mass. Regs. 2.05(5). And notably, no argument was made on the
19 likelihood that Mrs. Kennedy even has a criminal history.

20 At bottom, this case concerns the conduct of law enforcement agents on April 10, 2019,
21 and whether, as has been alleged in the Complaint, they violated Mrs. Kennedy’s rights under the
22 United States Constitution, the Massachusetts Declaration of Rights, Massachusetts state law, and
23 the common law of this jurisdiction. Mrs. Kennedy’s criminal history, if any, appears to have no
24 bearing on this case. Mr. Kormah’s criminal history is similarly disconnected from the claims or
25 defenses in this case because he is a nonparty to the litigation and was not present when the
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1 alleged warrantless search occurred. The MSP Defendants offer no explanation for how either
2 individual's criminal history played a role in the agents' actions on April 10, 2019. Further, this
3 case may never reach a trial because the Court has referred the case to alternative dispute
4 resolution for mediation. (ECF No. 72.)

5 With this potential outcome, allowing access to the requested records, without establishing
6 the relevance of the information therein to the merits of the claims or to the case's disposition at
7 trial, would enable any civil litigant to circumvent the ordinary protections placed on such private
8 and sensitive information and could discourage plaintiffs from bringing lawsuits for fear of
9 embarrassment. And where neither side has made pretrial disclosures of anticipated trial
10 witnesses, the records request for impeachment purposes is premature.

12 **IV. CONCLUSION**

13 For the foregoing reasons, the MSP Defendants' motion is **DENIED**.

14 **IT IS SO ORDERED.**

16 Dated: June 20, 2023

19 /s/ Margaret R. Guzman

20 MARGARET R. GUZMAN
United States District Judge